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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,970	09/14/2006	Yvette Pescher	1022702-000298	6435

21839 7590 04/17/2009
BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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04/17/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/559,970	Applicant(s) PESCHER ET AL.	
	Examiner /Peter A. Hruskoci/	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/3 and 12/11/08, and 3/27/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-57 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43-57 and 59-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/3/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-56, and 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favstritsky et al. 4,966,716 in view of Yu et al. 5,670,055. Favstritsky et al. disclose (see col. 5 line 15 through col. 8 line 2, and col. 8 line 45) a method for controlling bacterial growth in a wastewater system substantially as claimed. The claims differ from Favstritsky et al. by reciting that a specific biocide is added or contacted with the system. Yu et al disclose (see col. 2 line 21 through col. 4 line 67) that it is known in the art to add the recited biocide to an aqueous system to aid in controlling the growth of bacterial biomass in the aqueous system. It would have been obvious to one skilled in the art to modify the method of Favstritsky et al. by addition of the recited biocide in view of the teachings of Yu et al., to aid in controlling growth of the biomass in the system. The specific amount of biocide added, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific aqueous system treated and results desired, absent a sufficient showing of unexpected results.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Favstritsky et al. 4,966,716 in view of Yu et al. 5,670,055 as above, and further in view of Jones et al. 6,784,168. The claim differs from the references as applied above, by reciting that the biocide is formulated with one or more specific components. Jones et al. disclose (see col. 2 line 21 through col. 4 line 67, and col. 9 lines 4-30) that it is known in the art to add a composition including the recited

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biocide with the recited components to an aqueous system, to aid in inhibiting growth of bacteria in aqueous systems. It would have been obvious to one skilled in the art to modify the references as applied above, by addition of the recited components in view of the teachings of Jones et al., to aid in controlling growth of the biomass in the system.

Claims 43-57 and 59-64 are directed to an invention not patentably distinct from claims 33-56 of commonly assigned 10/559,969, claims 37-53, 58, and 60-68 of commonly assigned 11/630,604, and claims 35-66 of commonly assigned 11/793,303. Specifically, the method steps recited in the instant claims appear to be included in the claims of the copending applications. It is submitted that the biomass recited in instant claim 43 is considered patentably indistinguishable from the sewage sludge recited in claim 33 of 10/559,969 or claim 35 of 11/793,303, or the sludge recited in claim 37 of 11/630,604. It is further submitted that the amount of biocide added in instant claim 43 would appear to reduce pathogen content in 10/559,969 and 11/793,303, and reduce sludge bulking as in claim 37 of 11/630,604.

Since there is no showing of common ownership at the time the instant invention was made in the instant application, the assignee is required to either (a) Name the first inventor of conflicting subject matter under 102(f) or (g), or show the inventions of the applications were commonly owned at the time the instant invention was made in accordance with MPEP 804.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(f) he did not himself invent the subject matter sought to be patented.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-57 and 59-64 are rejected under 35 U.S.C. 102(f)/103a because the applicant did not invent the claimed subject matter. It is submitted that applications 10/559,969, 11/630,604, and 11/793,303 appear to present evidence that the inventive entity in the instant application did not invent the subject matter recited in the instant claims. It would have been obvious to one skilled in the art that the sludge disclosed in 10/559,969, 11/630,604, 11/793,303 would include biomass formed in a wastewater treatment plant used for the treatment of industrial or municipal effluent, and the amounts of biocide added in the above applications would control bacterial growth as in the instant process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Peter A. Hruskoci/ whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 8:00AM-5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter A. Hruskoci/
Primary Examiner
Art Unit 1797

4/13/09

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/559,970	PESCHER ET AL.	
	Examiner	Art Unit	
	/Peter A. Hruskoci/	1797	